

ACTIONS
Board of Supervisors Meeting of May 8, 2013

May 9, 2013

<u>AGENDA ITEM/ACTION</u>	<u>ASSIGNMENT</u>	<u>PODCAST</u>
<p>1. Call to Order.</p> <ul style="list-style-type: none"> Meeting was called to order at 6:00 p.m. by the Chair, Ms. Mallek. All BOS members were present. Also present were Bill Letteri, Larry Davis and Travis Morris. 		Listen
<p>4. Adoption of Final Agenda.</p> <ul style="list-style-type: none"> ACCEPTED final agenda. 		
<p>5. Brief Announcements by Board Members.</p> <p><u>Dennis Rooker:</u></p> <ul style="list-style-type: none"> Announced that there will be a public information meeting on May 23, 2013 at 5:00 p.m., at the Holiday Inn on Emmett Street focusing on alternative designs of the southern interchange of the Route 29 Bypass. <p><u>Ann Mallek:</u></p> <ul style="list-style-type: none"> Emphasized the importance of complying with regulations regarding Financial Disclosure of gifts and donations. Commended the Economic Development staff for working hard to bring the Virginia Bio State Conference to Albemarle. Announced that there is a Memorial Day celebration on May 27, 2013 at 10:00 a.m., at the Earlysville Post Office. Announced that the Resolution of Intent to amend the County Code for parking, stacking and loading of vehicles in residential areas is Item 8.1 on the Consent Agenda and is not open for public hearing tonight. 		
<p>7. From the Public: Matters Not Listed for Public Hearing on the Agenda.</p> <p><u>The following residents of Walnut Hills Subdivision spoke about the blasting going on at the Airport:</u></p> <ul style="list-style-type: none"> <u>Steven DeJong</u> <u>Jonathan Boersman</u> <u>Reo Hartfield</u> <u>Rit Venerus</u> <u>Denise Horbaly</u> <ul style="list-style-type: none"> <u>Charles Battig</u> made a presentation entitled "<i>Updates: Radiation Safety Concerns in Albemarle Schools and at Home</i>". <u>Lonnie Murray</u> spoke in opposition to paving Castle Rock Road, and the consequences of paving rural roads. <u>Bob Garland Jr.</u> spoke on behalf of the Board of the Canterbury Hills Association in support of Item 8.1 on the Consent Agenda. <u>Nancy Carpenter</u> spoke about voucher funding for The Crossings at Fourth and Preston. <u>Constance Stevens</u> spoke about the appropriateness of Chris Dumler continuing to serve on the Board of Supervisors. 		Listen

	<ul style="list-style-type: none"> • <u>Lilly Anderson</u>, a student at Monticello High School, presented information on her CAP project concerning the effects of the 5th Street Station. • <u>Tracy Craft, Walt Rocker, Dixon White and Ariana Freed</u>, Monticello High School students, presented information on their CAP project concerning the County's proposed firing range. • <u>Sarah Donnelly</u>, a resident of Esmont, read an article entitled "<i>Love Canal</i>". • <u>Randolph Byrd</u> asked Board to consider planning a dog park in the Crozet area. 		
8.1	<p>Resolution of Intent to amend County Code § 18-4.12, Parking, Stacking and Loading; and set a public hearing to consider an ordinance to amend County Code Chapter 9, Motor Vehicles and Traffic.</p> <ul style="list-style-type: none"> • ADOPTED Resolution of Intent to consider amending County Code § 18-4.12.3, prohibiting activities in parking, stacking and loading areas, and any other related sections determined to be necessary for amendment. • SET the proposed ordinance amending County Code § 9-500, which will be developed concurrently with the zoning text amendment for County Code § 18-4.12.3, for a public hearing to be held concurrent with the zoning text amendment. 	<p><u>Clerk</u>: Forward copy of signed resolution to County Attorney's Office. Schedule for public hearing. (Attachment 1) <u>Community Development</u>: Proceed as approved.</p>	Listen
9.	<p>Appeal: ARB-2013-10. New Hope Church Initial Plan.</p> <ul style="list-style-type: none"> • By a vote of 5:1 (Mallek), AFFIRMED the ARB's decision. 		Listen
10.	<p>PROJECT: SP-2012-00030. The Peabody School (Sign #51).</p> <ul style="list-style-type: none"> • By a vote of 6:0, APPROVED SP 2012-030 subject to the revised application and three conditions as recommended by staff. • By a vote of 6:0, APPROVED the variation request to allow the multipurpose building to be located 10 feet from the property line by allowing the reduction in setbacks from 30 feet to 10 feet, for the reasons recommended by staff. 	<p><u>Clerk</u>: Set out conditions of approval. (Attachment 2)</p>	Listen
11.	<p>PROJECT: ZMA-2012-00006. Church of Our Saviour.</p> <ul style="list-style-type: none"> • By a vote of 5:0:1 (Rooker recused), APPROVED ZMA-2012-00006 subject to proffer dated and signed April 24, 2013. 	<p><u>Clerk</u>: Set out proffers. (Attachment 3)</p>	Listen
12.	<p>ZTA-2013-00001. Wireless Phase 1.</p> <ul style="list-style-type: none"> • By a vote of 6:0, ADOPTED Ordinance No. 13-18(3). 	<p><u>Clerk</u>: Forward signed copy of ordinance to Community Development and County Attorney's Office. (Attachment 4)</p>	Listen
	<p>Recess. At 9:13 p.m., the Board recessed and reconvened at 9:21 p.m.</p>		
13.	<p>An ordinance to amend Chapter 6, Fire Protection, Article III, Fireworks, of the Albemarle County Code.</p> <ul style="list-style-type: none"> • By a vote of 6:0, ADOPTED Ordinance No. 	<p><u>Clerk</u>: Forward signed copy of ordinance to Fire and Rescue Office and County Attorney's Office.</p>	Listen

RESOLUTION OF INTENT

WHEREAS, County Code § 18-4.12.3, which is part of the Albemarle County Zoning Ordinance, includes regulations pertaining to keeping inoperable motor vehicles (“inoperable vehicles”) on private property; and

WHEREAS, County Code § 9-500, which is not part of the Zoning Ordinance, also includes regulations pertaining to keeping inoperable vehicles on private property; and

WHEREAS, County Code § 9-500 and County Code § 18-4.12.3 currently establish generally similar standards for keeping inoperable vehicles on private property, including the number of inoperable vehicles that may be kept on private property, how they are to be shielded or screened from view, and that shielding or screening may include vehicle covers under Virginia Code § 15.2-904; and

WHEREAS, effective July 1, 2013, Albemarle County will be among those localities enabled to regulate inoperable vehicles under Virginia Code § 15.2-905, rather than Virginia Code § 15.2-904; and

WHEREAS, under Virginia Code § 15.2-905, localities may limit the number of inoperable vehicles that may be stored outside of a fully enclosed building, regardless of whether they are shielded or screened from view; and

WHEREAS, in order to promote the efficient and effective administration of the County’s regulations, it is desirable to have County Code §§ 9-500 and 18-4.12.3 be consistent with one another and to implement, as appropriate, the enabling authority in Virginia Code § 15.2-905 in order to address the impacts resulting from the accumulation of inoperable vehicles, particularly those on small lots in the County’s urban neighborhoods.

NOW, THEREFORE, BE IT RESOLVED THAT for purposes of public necessity, convenience, general welfare and good zoning practices, the Albemarle County Board of Supervisors hereby adopts a resolution of intent to consider amending the regulations pertaining to inoperable vehicles in Albemarle County Code § 18-4.12.3, and to consider amending any other sections of the Zoning Ordinance deemed to be appropriate, to achieve the purposes described herein; and

BE IT FURTHER RESOLVED THAT the Planning Commission shall hold a public hearing on the zoning text amendment proposed pursuant to this resolution of intent, and make its recommendations to the Board of Supervisors at the earliest possible date.

CONDITIONS OF APPROVAL

SP-2012-00030. The Peabody School (Sign #51).

1. Development of the use shall be in general accord with the conceptual plan titled "Peabody School Application Plan for Special Use Permit," prepared by Collins Engineering, with the latest revision date of **March 18, 2013**, as determined by the Director of Planning and the Zoning Administrator. To be in general accord with the Conceptual Plan, development shall reflect the following major elements within the development essential to the design of the development:
 - Location of parking areas and turn arounds
 - Open Space
 - Landscape Buffer
 - Location of multi-purpose building addition

as shown on the plan.

Minor modifications to the plan which do not conflict with the elements above may be made to ensure compliance with the Zoning Ordinance.

2. The maximum enrollment shall not exceed two hundred ten (210) children.
3. Landscape buffer adjacent to the Southern Parkway shall include screening in accordance with Section 32.7.9 of the Zoning Ordinance for the parking, turn around, and the multi-purpose building.

Original Proffer X
Amendment

PROFFER STATEMENT

ZMA No. 201200006 **Church of Our Saviour**

Tax Map & Parcel Number(s): **T.M.P. 61-144 (partial), T.M.P. 61-146D (partial)**

Owner(s) of Record: **Trustees for the Church of Our Saviour, D. B. 3893-132, D.B. 1923-547**

Date of Proffer Signature: **April 24, 2013**

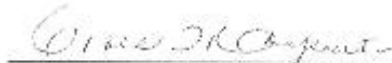
.467 acres to be rezoned from **R2** to **C1**

Trustees of the Church of Our Saviour, is/are the owner(s) (the "Owner") of Tax Map and Parcel Number(s) T.M.P. 61-144 (partial), T.M.P. 61-146D (partial) (the "Property") which is the subject of rezoning application ZMA NO. 201200006- Church of Our Saviour, for a project known as "Church of Our Saviour" (the "Project").

Pursuant to Section 33 of the Albemarle County Zoning Ordinance (Chapter 18 of the Albemarle County Code), the Owner hereby voluntarily proffers the conditions listed below which shall be applied to the Property if it is rezoned to the zoning district identified above. These conditions are proffered as a part of the requested rezoning and the Owner acknowledges that the conditions are reasonable. Each signatory of the Owner for this Proffer Statement,

1. Any cemetery on the Property shall be accessory to the Church use.

OWNER



By: **Grace Carpenter, Trustee**
Tax Map & Parcel Number: **T.M.P. 61-144, T.M.P. 61-146D**

OWNER



By: **Charles Mason, Trustee**
Tax Map & Parcel Number: **T.M.P. 61-144, T.M.P. 61-146D**

ORDINANCE NO. 13-18(3)

AN ORDINANCE TO AMEND CHAPTER 18, ZONING, ARTICLE I, GENERAL PROVISIONS, AND ARTICLE II, BASIC REGULATIONS, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 18, Zoning, Article I, General Provisions, and Article II, Basic Regulations, are hereby amended and reordained as follows:

By Amending:

- Sec. 3.1 Definitions
- Sec. 5.1.40 Personal wireless service facilities

Chapter 18. Zoning

Article I. General Provisions

Sec. 3.1 Definitions

...

Collocation: As used in section 5.1.40 and any definitions pertaining to personal wireless service facilities, the mounting or installation of one or more antennas for the purpose of providing personal wireless services on an existing personal wireless service facility, the addition of related cables, wiring, supporting brackets and other structural equipment, and the addition of transmission equipment.

...

Existing building: As used in section 5.1.40 and any definitions pertaining to personal wireless service facilities, a building that was lawfully constructed or established and complies with the minimum applicable bulk, height, setback, floor area, and other structure requirements of the district in which the building is located.

Existing structure: As used in section 5.1.40 and any definitions pertaining to personal wireless service facilities, a structure, other than a flagpole or an existing personal wireless service facility, that was lawfully constructed or established and complies with the minimum applicable bulk, height, setback, floor area or other structure requirements of the district in which the structure is located.

Existing personal wireless service facility or existing facility: As used in section 5.1.40 and any definitions pertaining to personal wireless service facilities, a personal wireless service facility that was approved under section 5.1.40 or by special use permit prior to October 13, 2004, was thereafter established, and has continued in existence since being established, and which provides personal wireless services.

...

Personal wireless services: Commercial mobile services, unlicensed wireless services, common carrier wireless exchange access services, as those services are defined by federal law and, for the purposes of this chapter, unlicensed wireless broadband internet access services.

Personal wireless service facility: A facility for the provision of personal wireless services and which may be composed of antennas, cables, wiring, supporting brackets and other structural equipment, grounding rods, transmission equipment, one or more ground equipment shelters, and a self-supporting monopole or tower. (Added 10-17-01; Amended 10-13-04; Amended 6-1-11)

...

Replacement: As used in section 5.1.40 and any definitions pertaining to personal wireless service facilities, the replacement of one or more antennas, cables, wiring, supporting brackets and other structural equipment, transmission equipment, and ground equipment shelter, all of which is for the purpose of providing personal wireless services on an existing personal wireless service facility.

...

Tier I personal wireless service facility or Tier I facility: A personal wireless service facility that: (i) is located entirely within an existing building but which may include a self-contained ground equipment shelter not exceeding one hundred fifty (150) square feet that is not within the building or a whip antenna that satisfies the requirements of subsection 5.1.40(c); (ii) consists of one or more antennas, other than a microwave dish, attached to an existing structure, together with associated personal wireless service equipment; (iii) is located within or camouflaged by an addition to an existing structure determined by the agent to be in character with the structure and the surrounding district; (iv) is a collocation or a replacement that does not substantially change the physical dimensions of an existing personal wireless service facility as that phrase is used in subsection 5.1.40(f); or (v) is the replacement of a wooden monopole with a metal monopole that does not exceed the maximum dimensions permitted under subsection 5.1.40(d)(5). (Added 10-13-04)

Article II. Basic Regulations

Sec. 5.1.40 Personal wireless service facilities

(Amended 10-13-04)

The purpose of section 5.1.40 is to implement the personal wireless service facilities policy, adopted as part of the comprehensive plan. Each personal wireless service facility (hereinafter "facility") shall be subject to following, as applicable:

- a. *Application for approval:* Each request for approval of a facility shall include the following information:
 1. *Application form and signatures.* A completed application form, signed by the parcel owner, the parcel owner's agent or the contract purchaser, and the proposed facility's owner. If the owner's agent signs the application, he shall also submit written evidence of the existence and scope of the agency. If the contract purchaser signs the application, he shall also submit the owner's written consent to the application.
 2. *Plat or survey of the parcel.* A recorded plat or recorded boundary survey of the parcel on which the facility will be located; provided, if neither a recorded plat nor boundary survey exists, a copy of the legal description of the parcel and the Albemarle County Circuit Court deed book and page number.
 3. *Ownership.* The identity of the owner of the parcel and, if the owner is other than a real person, the complete legal name of the entity, a description of the type of entity, and written documentation that the person signing on behalf of the entity is authorized to do so.
 4. *Plans and supporting drawings, calculations and documentation.* Except where the facility will be located entirely within an existing structure or an existing building, a scaled plan and a scaled elevation view and other supporting drawings, calculations, and other documentation required by the agent, signed and sealed by an appropriate licensed professional. The plans and supporting drawings, calculations and documentation shall show:
 - (a) *Existing and proposed improvements.* The location and dimensions of all existing and proposed improvements on the parcel including access roads and structures, the location and dimensions of significant natural features, and the maximum height above ground of the facility (also identified in height above sea level).
 - (b) *Elevation.* The benchmarks and datum used for elevations. The datum shall coincide with the Virginia State Plane Coordinate System, South Zone, North American Datum of 1983 (NAD83), United States Survey Feet North American Vertical Datum of 1988 (NAVD88), and the benchmarks shall be acceptable to the county engineer.
 - (c) *Design.* The design of the facility, including the specific type of support structure and the design, type, location, size, height and configuration of all existing and proposed antennas and other equipment.
 - (d) *Color.* Identification of each paint color on the facility, by manufacturer color name and color number. A paint chip or sample shall be provided for each color.

- (e) *Topography.* Except where the facility would be attached to an existing structure or an existing building, the topography within two thousand (2,000) feet of the proposed facility, in contour intervals not to exceed ten (10) feet for all lands within Albemarle County and, in contour intervals shown on United States Geological Survey topographic survey maps or the best topographic data available, for lands not within Albemarle County.
 - (f) *Trees.* The height, caliper and species of all trees where the dripline is located within fifty (50) feet of the facility that are relied upon to establish the proposed height or screening, or both, of the monopole or tower. All trees that will be adversely impacted or removed during installation or maintenance of the facility shall be noted, regardless of their distances to the facility.
 - (g) *Setbacks, parking, fencing, and landscaping.* All existing and proposed setbacks, parking, fencing and landscaping.
 - (h) *Location of accessways.* The location of all existing accessways and the location and design of all proposed accessways.
 - (i) *Location of certain structures and district boundaries.* Except where the facility would be attached to an existing structure or an existing building, residential and commercial structures, and residential and rural areas district boundaries.
 - (j) *Proximity to airports.* If the proposed monopole or tower will be taller than one hundred fifty (150) feet, the proximity of the facility to commercial and private airports.
5. *Photographs.* Photographs, where possible, or perspective drawings of the facility site and all existing facilities within two hundred (200) feet of the site, if any, and the area surrounding the site.
6. *Balloon tests.* For any proposed monopole or tower, photographs taken of a balloon test, which shall be conducted, if requested by the agent, as follows:
- (a) *Scheduling.* The applicant shall contact the agent within ten (10) days after the date the application was submitted to schedule a date and time when the balloon test will be conducted. The test shall be conducted within forty (40) days after the date the application was submitted, and the applicant shall provide the agent with at least seven (7) days prior notice; provided that this deadline may be extended due to inclement weather or by the agreement of the applicant and the agent.
 - (b) *Marking key boundaries and locations.* Prior to the balloon test, the locations of the access road, the lease area, the tower site, the reference tree and the tallest tree within twenty five (25) feet of the proposed monopole shall be surveyed and staked or flagged in the field.
 - (c) *Balloon height.* The test shall consist of raising one or more balloons from the site to a height equal to the proposed facility.
 - (d) *Balloon color or material.* The balloons shall be of a color or material that provides maximum visibility.
 - (e) *Photographing balloon test.* The photographs of the balloon test shall be taken from the nearest residence and from appropriate locations on abutting properties, along each publicly used road from which the balloon is visible, and other properties and locations as deemed appropriate by the agent. The applicant shall identify the camera type, film size, and focal length of the lens for each photograph.
7. *Additions of antennas.* If antennas are proposed to be added to an existing structure, existing building or an existing facility, all existing antennas and other equipment on the structure, building or facility, as well as all ground equipment, shall be identified by owner, type and

size. The method(s) by which the antennas will be attached to the mounting structure shall be depicted.

8. *Site under conservation or open space easement.* If the proposed facility would be located on lands subject to a conservation easement or an open space easement, a copy of the recorded deed of easement and the express written consent of all easement holders to the proposed facility.
- b. *Exemption from regulations otherwise applicable:* Except as otherwise exempted in this subsection, each facility shall be subject to all applicable regulations in this chapter.
1. *Building site.* Notwithstanding section 4.2.3.1, a facility is not required to be located within a building site.
 2. *Setbacks.* Notwithstanding section 4.10.3.1(b), the agent may authorize a facility to be located closer in distance than the height of the tower or other mounting structure to any lot line if the applicant obtains an easement or other recordable document showing agreement between the lot owners, acceptable to the county attorney addressing development on the part of the abutting parcel sharing the common lot line that is within the facility's fall zone (e.g., the setback of an eighty (80) foot-tall facility could be reduced to thirty (30) feet if an easement is established prohibiting development on the abutting lot within a fifty (50) foot fall zone). If the right-of-way for a public street is within the fall zone, the Virginia Department of Transportation shall be included in the staff review, in lieu of recording an easement or other document.
 3. *Area, bulk and minimum yards.* Notwithstanding the requirements of the district in which the facility will be located, the area and bulk regulations, and the minimum yard requirements of the district shall not apply.
 4. *Required yards.* Notwithstanding section 4.11, a facility may be located in a required yard.
 5. *Site plan.* Notwithstanding section 32.2, a site plan shall not be required for a facility, but the facility shall be subject to the requirements of section 32 and the applicant shall submit all schematics, plans, calculations, drawings and other information required by the agent to determine whether the facility complies with section 32. In making this determination, the agent may impose reasonable conditions authorized by section 32 in order to ensure compliance.
- c. *Tier I facilities.* Each Tier I facility may be established upon approval by the agent of an application satisfying the requirements of subsection 5.1.40(a), demonstrating that the facility will be installed and operated in compliance with all applicable provisions of this chapter, and satisfying the following:
1. *Compliance with subsection 5.1.40(b).* The facility shall comply with the applicable requirements of subsection 5.1.40(b).
 2. *General design.* The facility shall be designed, installed and maintained as follows: (i) guy wires shall not be permitted; (ii) outdoor lighting for the facility shall be permitted only during maintenance periods; regardless of the lumens emitted, each outdoor luminaire shall be fully shielded as required by section 4.17; provided that these restrictions shall not apply to any outdoor lighting required by federal law; (iii) any ground equipment shelter not located within an existing structure or an existing building shall be screened from all lot lines either by terrain, existing structures, existing vegetation, or by added vegetation approved by the agent; (iv) a whip antenna less than six (6) inches in diameter may exceed the height of the existing structure or the existing building; (v) a grounding rod, whose height shall not exceed two (2) feet and whose width shall not exceed one (1) inch in diameter at the base and tapering to a point, may be installed at the top of the facility, the existing structure or the existing building; and (vi) within thirty (30) days after completion of the installation of the facility, the applicant shall provide a statement to the agent certifying that the height of all components of the facility complies with this regulation.

3. *Antennas and associated equipment.* Antennas and associated equipment that are not entirely within a proposed facility, an existing facility, an existing structure, or an existing building shall be subject to the following: (i) the total number of arrays of antennas shall not exceed three (3), and each antenna proposed under the pending application shall not exceed the size shown on the application, which size shall not exceed one thousand one hundred fifty two (1152) square inches; (ii) no antenna shall project from the facility, structure or building beyond the minimum required by the mounting equipment, and in no case shall any point on the face of an antenna project more than twelve (12) inches from the facility, structure or building; and (iii) each antenna and associated equipment shall be a color that matches the facility, structure or building. For purposes of this section, all types of antennas and dishes, regardless of their use, shall be counted toward the limit of three arrays.
4. *Tree conservation plan; content.* Before the building official issues a building permit for the facility, the applicant shall submit a tree conservation plan prepared by a certified arborist. The plan shall be submitted to the agent for review and approval to ensure that all applicable requirements have been satisfied. The plan shall specify tree protection methods and procedures, identify all existing trees to be removed on the parcel for the installation, operation and maintenance of the facility, and identify all dead and dying trees that are recommended to be removed. In approving the plan, the agent may identify additional trees or lands up to two hundred (200) feet from the lease area to be included in the plan.
5. *Tree conservation plan; compliance; amendment.* The installation, operation and maintenance of the facility shall be conducted in accordance with the tree conservation plan. The applicant shall not remove existing trees within the lease area or within one hundred (100) feet in all directions surrounding the lease area of any part of the facility except for those trees identified on the plan to be removed for the installation, operation and maintenance of the facility and dead and dying trees. Before the applicant removes any tree not designated for removal on the approved plan, the applicant shall submit and obtain approval of an amended plan. The agent may approve the amended plan if the proposed tree removal will not adversely affect the visibility of the facility from any location off of the parcel. The agent may impose reasonable conditions to ensure that the purposes of this paragraph are achieved.
6. *Discontinuance of use; notice thereof; removal; surety.* Within thirty (30) days after a facility's use for personal wireless service purposes is discontinued, the owner of the facility shall notify the zoning administrator in writing that the facility's use has discontinued. The facility shall be disassembled and removed from the site within ninety (90) days after the date its use for personal wireless service purposes is discontinued. If the agent determines at any time that surety is required to guarantee that the facility will be removed as required, the agent may require that the parcel owner or the owner of the facility submit a certified check, a bond with surety, or a letter of credit, in an amount sufficient for, and conditioned upon, the removal of the facility. The type and form of the surety guarantee shall be to the satisfaction of the agent and the county attorney. In determining whether surety should be required, the agent shall consider the following: (i) whether there is a change in technology that makes it likely that the monopole or tower will be unnecessary in the near future; (ii) the permittee fails to comply with applicable regulations or conditions; (iii) the permittee fails to timely remove another monopole or tower within the county; and (iv) whenever otherwise deemed necessary by the agent.
7. *Creation of slopes steeper than 2:1.* No slopes associated with the installation of the facility and its accessory uses shall be created that are steeper than 2:1 unless retaining walls, revetments, or other stabilization measures acceptable to the county engineer are employed.
8. *Ground equipment shelter; fencing.* Any ground equipment shelter not located within an existing building shall be fenced only with the approval of the agent upon finding that the fence: (i) would protect the facility from trespass in areas of high volumes of vehicular or pedestrian traffic or, in the rural areas, to protect the facility from livestock or wildlife; (ii) would not be detrimental to the character of the area; and (iii) would not be detrimental to the public health, safety or general welfare.

- d. *Tier II facilities.* Each Tier II facility may be established upon approval by the agent of an application satisfying the requirements of subsection 5.1.40(a) and demonstrating that the facility will be installed and operated in compliance with all applicable provisions of this chapter, and satisfying the following:
1. *Compliance with subsections 5.1.40(b) and 5.1.40(c).* The facility shall comply with the applicable requirements of subsection 5.1.40(b) and with the requirements of subsections 5.1.40(c)(2) through (8).
 2. *Screening and siting to minimize visibility.* The site shall provide adequate opportunities for screening and the facility shall be sited to minimize its visibility from adjacent parcels and streets, regardless of their distance from the facility. The facility also shall be sited to minimize its visibility from any state scenic river, national park or national forest, regardless of whether the site is adjacent to the river, park or forest. If the facility would be located on lands subject to a conservation easement or an open space easement, or adjacent to a conservation easement or open space easement, the facility shall be sited so that it is not visible from any resources specifically identified for protection in the deed of easement.
 3. *Open space plan resources.* The facility shall not adversely impact resources identified in the county's open space plan.
 4. *Horizontal separation of multiple facilities.* The facility shall not be located so that it and three (3) or more existing or approved personal wireless service facilities would be within an area comprised of a circle centered anywhere on the ground having a radius of two hundred (200) feet.
 5. *Diameter of monopole.* The maximum base diameter of the monopole shall be thirty (30) inches and the maximum diameter at the top of the monopole shall be eighteen (18) inches.
 6. *Height of monopole.* The top of the monopole, measured in elevation above mean sea level, shall not be more than ten (10) feet taller than the tallest tree within twenty-five (25) feet of the monopole, and shall include any base, foundation or grading that raises the monopole above the pre-existing natural ground elevation.
 7. *Color of monopole, antennas and equipment.* Each monopole shall be a dark brown natural or painted wood color that blends into the surrounding trees. The antennas, supporting brackets, and all other equipment attached to the monopole shall be a color that closely matches that of the monopole. The ground equipment, the ground equipment shelter, and the concrete pad shall also be a color that closely matches that of the monopole, provided that the ground equipment and the concrete pad need not closely match the color of the monopole if they are enclosed within a ground equipment shelter or within or behind an approved structure, façade or fencing that: (i) is a color that closely matches that of the monopole; (ii) is consistent with the character of the area; and (iii) makes the ground equipment, ground equipment shelter, and the concrete pad invisible at any time of year from any other parcel or a public or private street.
 8. *Placement of cables, wiring and similar attachments.* Each wood or concrete monopole shall be constructed so that all cables, wiring and similar attachments that run vertically from the ground equipment to the antennas are placed on the monopole to face the interior of the site and away from public view, as determined by the agent. Metal monopoles shall be constructed so that vertical cables, wiring and similar attachments are contained within the monopole's structure.
 9. *Building permit application; submitting certification of monopole height and revised plans.* The following shall be submitted with the building permit application: (i) certification by a registered surveyor stating the height of the reference tree that is used to determine the permissible height of the monopole; and (ii) a final revised set of plans for the construction of the facility. The agent shall review the surveyor's certificate and the plans to ensure that all applicable requirements have been satisfied.
 10. *Completion of installation; submitting certifications of monopole and lightning rod height.* The following shall be submitted to the agent after installation of the monopole is completed and

prior to issuance of a certificate of occupancy: (i) certification by a registered surveyor stating the height of the monopole, measured both in feet above ground level and in elevation above mean sea level, using the benchmarks or reference datum identified in the application; and (ii) certification stating that the lightning rod's height does not exceed two (2) feet above the top of the monopole and width does not exceed a diameter of one (1) inch.

11. *Notice.* Notice of the agent's consideration of an application for a Tier II facility shall be sent by the agent to the owner of each parcel abutting the parcel on which the proposed facility will be located. The notice shall describe the nature of the facility, its proposed location on the lot, its proposed height, and the appropriate county office where the complete application may be viewed. The notice shall be mailed by first class mail or hand delivered at least ten (10) days before the agent acts on the application. Mailed notice shall be mailed to the last known address of the owner, and mailing the notice to the address shown on the current real estate tax assessment records of the county shall be deemed compliance with this requirement. The failure of an owner to receive the notice as provided herein shall not affect the validity of an approved facility and shall not be the basis for an appeal.
 12. *Disapproval of application; appeal.* If the agent disapproves an application, he shall identify which requirements were not satisfied and inform the applicant what needs to be done to satisfy each requirement. The applicant may appeal the disapproval of an application to the board of supervisors. An appeal shall be in writing and be received in the office of the clerk of the board of supervisors within ten (10) calendar days after the date of the disapproval by the agent. In considering an appeal, the board may affirm, reverse, or modify in whole or in part, the decision of the agent, and its decision shall be based upon the requirements delineated in this subsection (d).
 13. *Agent approval of increase in height of monopole based on increase in height of reference tree.* Upon the written request of the applicant, the agent may authorize the height of an existing Tier II facility's monopole to be increased above its originally approved height upon finding that the reference tree has grown to a height that is relative to the requested increase in height of the monopole. The application shall include a certified survey of the reference tree's new height, as well as the heights of other trees to be considered by the agent. The agent shall not grant such a request if the increase in height would cause the facility to be skylighted or would increase the extent to which it is skylighted.
- e. *Tier III facilities.* Each Tier III facility may be established upon approval of a special use permit by the board of supervisors, initiated upon an application satisfying the requirements of subsection 5.1.40(a) and section 33.4, and it shall be installed and operated in compliance with all applicable provisions of this chapter and the following:
1. The facility shall comply with the applicable requirements of subsections 5.1.40(b), the requirements of subsections 5.1.40(c)(2) through (98), and the requirements of subsections 5.1.40(d)(2), (3) and (7), unless modified by the board of supervisors during special use permit review.
 2. The facility shall comply with all conditions of approval of the special use permit.
- f. *Collocation, replacement or removal.* Any collocation, replacement or removal of antennas or equipment is subject to the following:
1. *Collocation or replacement that would not substantially change the physical dimensions of a facility approved as a Tier I, II or III facility.* Upon receipt by the agent of an application satisfying the requirements of subsections 5.1.40(a)(1), (3), (4) and (7), any collocation or replacement that would not substantially change the physical dimensions of an existing facility approved as a Tier I, II or III facility shall be approved by the agent. The agent shall approve the application regardless of whether the proposed antennas or equipment are different from those shown on, or were not shown on, the previously approved application under subsection 5.1.40(a)(4)(c) or any condition imposed in conjunction with a special use permit for a Tier III facility.
 2. *Collocation or replacement that would substantially change the physical dimensions of a facility approved as a Tier I, II or III facility.* Any collocation or replacement that would

substantially change the physical dimensions of an existing facility approved as a Tier I, II or III facility shall be reviewed and acted upon as a Tier I, II or III facility, as applicable.

3. *Collocation or replacement that would not substantially change the physical dimensions of a facility approved by special use permit prior to October 13, 2004 or a facility that is a nonconforming structure.* Upon receipt by the agent of an application satisfying the requirements of subsections 5.1.40(a)(1), (3), (4) and (7), any collocation or replacement that would not substantially change the physical dimensions of an existing facility approved by special use permit prior to October 13, 2004 or that is a nonconforming structure shall be approved by the agent. The agent shall approve the application regardless of whether the proposed antennas or equipment are different from those shown on any plans approved or condition imposed in conjunction with a special use permit.
 4. *Collocation or replacement that would substantially change the physical dimensions of a facility approved by special use permit prior to October 13, 2004 or a facility that is a nonconforming structure.* Any collocation or replacement that would substantially change the physical dimensions of an existing facility approved by special use permit prior to October 13, 2004 or that is a nonconforming structure shall be subject to, reviewed and acted upon as a Tier I, II or III facility, as provided in subsection 5.1.40(g)(2).
 5. *Removal of antennas or equipment on any Tier I, II or III facility, any facility approved by special use permit prior to October 13, 2004 or any facility that is a nonconforming structure.* Any antennas or equipment on any existing Tier I, II or III facility, any existing facility approved by special use permit prior to October 13, 2004 or that is a nonconforming structure may be removed as a matter of right and regardless of any special use permit condition providing otherwise.
 6. *Meaning of "collocation or replacement that would not substantially change the physical dimensions of an existing facility."* A collocation or replacement that would not substantially change the physical dimensions of an existing facility is any change to the physical dimensions of an existing facility that is not within five hundred (500) feet of a dwelling unit located on a parcel under different ownership than the parcel on which the facility is located, that would: (i) add one or more antennas to the facility provided that the requirements of subsections 5.1.40(c)(1), (2), (3), (6) and (8) are satisfied; (ii) replace an existing monopole or tower with a monopole or tower of an equal or lesser height, provided that the requirements of subsection 5.1.40(d) (1), (5), (7), (8) and (10) are satisfied; (iii) replace an existing treetop facility with a monopole that is not more than ten (10) feet taller than the reference tree, provided that the requirements of subsection 5.1.40(d) (1), (5), (7), (8) and (10) are satisfied; (iv) strengthen an existing monopole or tower without the use of guy wires, provided that the requirements of subsection 5.1.40(d)(5), (7) and (8) are satisfied; or (v) expand the lease area or add ground equipment either within or outside of a ground equipment shelter, provided that the expanded lease area does not exceed twice the square footage of the original lease area, and further provided that the requirements of subsections 5.1.40(c)(7) and 5.1.40(d) (2), (4), (5), (8) and (9) are satisfied. Any change to the access to the facility that results in the removal of any tree shall be deemed to be a substantial change to the physical dimensions of an existing facility.
- g. *Administration of special use permits for facilities approved prior to October 13, 2004.* The following applies to the administration of any special use permit for an existing facility approved prior to October 13, 2004:
1. *Conditions.* If any condition of the special use permit is more restrictive than a corresponding standard in subsection 5.1.40(c) or (d), the corresponding standard in subsection 5.1.40(c) or (d) shall apply. If any condition of the special use permit is less restrictive than a corresponding standard in subsection 5.1.40(c) or (d) and the applicant establishes that vested rights have attached to the approved facility, the special use permit conditions shall apply.
 2. *Change to a facility that would substantially change the physical dimensions of a facility approved by special use permit prior to October 13, 2004.* Any proposed change to a facility that would substantially change the physical dimensions of the facility approved by special

use permit prior to October 13, 2004 under subsection 5.1.40(f)(4) shall be subject to the procedures and standards for a Tier II facility if the facility would qualify as a Tier II facility, or a Tier III facility if the facility would not qualify as a Tier II facility.

3. *Effect of changes.* Any change to a facility by collocation or replacement under subsection 5.1.40(f)(3) shall not reclassify the facility as a Tier I, II or III facility. Any change to a facility by collocation or replacement under subsection 5.1.40(g)(2) shall reclassify the facility as a Tier II or Tier III facility, as applicable. If the facility is approved as a Tier II facility, the prior special use permit conditions shall have no further force or effect.
- h. *Time for action.* Each action on an application for a Tier I, II or III facility shall be taken within the following periods:
1. *Applications for Tier I and Tier II facilities and applications for existing Tier III facilities that would not substantially increase the size of an existing monopole or tower.* Any application for a Tier I or Tier II facility, and any application for an existing Tier III facility that would not substantially increase the size of the existing monopole or tower, shall be approved or disapproved within ninety (90) days, as calculated under subsection 5.1.40(h)(3).
 2. *Applications for new Tier III facilities and applications for existing Tier III facilities that would substantially increase the size of an existing monopole or tower.* Any application for a Tier III facility, and any application for an existing Tier III facility that would substantially increase the size of an existing monopole or tower, shall be approved or disapproved within one hundred fifty (150) days, as calculated under subsection 5.1.40(h)(3).
 3. *Calculating the time for action.* The time for action on an application shall be calculated as follows:
 - (a) *Commencement.* The time for action under subsection 5.1.40(h)(1) or (h)(2) shall begin on the date the application is received in the department of community development.
 - (b) *Determination of completeness.* Within thirty (30) days after the application is received, the department of community development shall determine whether the application includes all of the applicable information required under subsections 5.1.40(a) through (e). If any required information was not provided, the department shall inform the applicant within the thirty (30) day period about which information must be submitted in order for the application to be determined to be complete.
 - (c) *Tolling.* The running of the time for action under subsection 5.1.40(h)(1) or (h)(2) shall be tolled between the date that the department informs the applicant that its application is incomplete under subsection 5.1.40(h)(3)(b) and the date on which the department receives all of the required information from the applicant.
 - (d) *Extension of running of time for action.* The time by which action must be taken under subsection 5.1.40(h)(1) or (h)(2) may be extended upon request by, or with the consent of, the applicant.
 4. *Effect of failure to approve or disapprove within time for action.* The failure to approve or disapprove an application within the time for action shall not be deemed to be approval of the application but, instead, shall only create a rebuttable presumption that the failure to timely act was not reasonable under 47 U.S.C. § 332(c)(7)(B)(ii).
 5. *Meaning of "substantially increase the size of an existing monopole or tower".* The phrase "substantially increase the size of an existing monopole or tower" means: (i) the mounting of the proposed antenna would increase the height of the monopole or tower by more than ten (10) percent, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth herein if necessary to avoid interference with existing antennas; (ii) the mounting of the proposed antenna would include installing more than the standard number of new equipment cabinets for the

technology involved, not to exceed four (4), or more than one new ground equipment shelter; (iii) the mounting of the proposed antenna would involve adding an appurtenance to the body of the monopole or tower that would protrude from the edge of the monopole or tower more than twenty (20) feet, or more than the width of the monopole or tower structure at the level of the appurtenance, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth herein if necessary to shelter the antenna from inclement weather or to connect the antenna to the monopole or tower by cable; or (iv) the mounting of the proposed antenna would involve excavation outside the current boundaries of the leased or owned property surrounding the monopole or tower and any access or utility easements currently related to the site.

(§ 5.1.40, Ord. 01-18(9), 10-17-01; Ord. 04-18(2), 10-13-04)

ORDINANCE NO. 13-6(2)

AN ORDINANCE TO AMEND CHAPTER 6, FIRE PROTECTION, ARTICLE III, FIREWORKS, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 6, Fire Protection, Article III, Fireworks, is hereby amended and reordained as follows:

By Amending:

- Sec. 6-303 Fireworks permits--Required
- Sec. 6-309 Disposal of unused fireworks after public display

Chapter 6. Fire Protection

Article III. Fireworks

State law reference--As to fireworks generally, see Va. Code §§ 15.2-974 and 27-95 to 27-100.1.

Sec. 6-303 Fireworks permits--Required.

A. Notwithstanding the other provisions of this article, displays of fireworks may be given by fair associations, amusement parks or by any organization or group of individuals in accordance with a permit from the fire official. Except as provided in section 6-302, it shall be unlawful for any person to hold, present or give any such display of fireworks without first having obtained such a permit from the fire official.

B. Except as provided in section 6-302, any person, business, organization or other entity engaged in the sale, storage, distribution, manufacture or display of fireworks anywhere in the County of Albemarle must obtain a permit from the fire official and must comply with all terms and conditions imposed by the fire official in connection with the permit prior to engaging in any sale, storage, distribution, manufacture or display of fireworks. The fee for such permit shall be as established in the fee schedule maintained by the fire official, as may be amended from time to time.

(Code 1967, § 10-6; 4-13-88; Ord. No. 97-9(1), 1-8-97; Code 1988, § 9-12; Ord. 98-A(1), 8-5-98; Ord. 01-6(1), 6-6-01)

State law reference--For state law as to authority of county to adopt this section, see Va. Code § 15.2-974.

...

Sec. 6-309 Disposal of unused fireworks after display.

Any fireworks remaining unfired at the end of any display shall be immediately disposed of in a manner safe for that particular type of fireworks.

(Code 1967, § 10-12; Ord. No. 97-9(1), 1-8-97; Code 1988, § 9-18; Ord. 98-(A), 8-5-98)

ORDINANCE NO. 13-7(1)

AN ORDINANCE TO AMEND CHAPTER 7, HEALTH AND SAFETY, ARTICLE I, NOISE, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 7, Health and Safety, Article I, Noise, is hereby amended and reordained as follows:

By Amending:

Sec. 7-106 Exempt Sounds

Chapter 7. Health and Safety

Article I. Noise

Sec. 7-106 Exempt sounds.

The following sounds are not prohibited by this article:

...

H. *Parades, fireworks and similar officially sanctioned events.* Sound produced by parades, fireworks or other similar events which are officially sanctioned, if required. This exemption shall apply only to fireworks displays duly issued a permit pursuant to chapter 6 of the Code.